

109TH CONGRESS
1ST SESSION

H. R. 3197

To authorize the Secretary of Homeland Security to regulate the production, storage, sale, and distribution of ammonium nitrate on account of the prior use of ammonium nitrate to create explosives used in acts of terrorism and to prevent terrorists from acquiring ammonium nitrate to create explosives.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Mr. WELDON of Pennsylvania (for himself, Mr. THOMPSON of Mississippi, Mr. ETHERIDGE, Mr. BROWN of Ohio, Mrs. CHRISTENSEN, and Mr. KING of New York) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To authorize the Secretary of Homeland Security to regulate the production, storage, sale, and distribution of ammonium nitrate on account of the prior use of ammonium nitrate to create explosives used in acts of terrorism and to prevent terrorists from acquiring ammonium nitrate to create explosives.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secure Handling of
5 Ammonium Nitrate Act of 2005”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Although ammonium nitrate is an impor-
4 tant fertilizer used in agricultural production, in the
5 wrong hands, ammonium nitrate can be used to cre-
6 ate explosives and was so used in terrorist attacks
7 conducted in Oklahoma City, Bali, and Istanbul.

8 (2) The production, importation, storage, sale,
9 and distribution of ammonium nitrate affects inter-
10 state and intrastate commerce.

11 (3) It is necessary for the Secretary of Home-
12 land Security to regulate the production, storage,
13 sale, and distribution of ammonium nitrate on ac-
14 count of the prior use of ammonium nitrate to cre-
15 ate explosives used in acts of terrorism and to pre-
16 vent terrorists from acquiring ammonium nitrate to
17 create explosives.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) ACT.—The term “this Act” includes regula-
21 tions issued under this Act.

22 (2) AMMONIUM NITRATE.—The term “ammo-
23 nium nitrate” means solid ammonium nitrate that is
24 chiefly the ammonium salt of nitric acid and con-
25 tains not less than 33 percent nitrogen, of which—

26 (A) 50 percent is in ammonium form; and

1 (B) 50 percent is in nitrate form.

2 (3) FACILITY.—The term “facility” means any
3 site where ammonium nitrate is produced, stored, or
4 held for distribution, sale, or use. The term in-
5 cludes—

6 (A) all buildings or structures used to
7 produce, store, or hold ammonium nitrate for
8 distribution, sale, or use at a single site; and

9 (B) multiple sites described in subpara-
10 graph (A), if the sites are—

11 (i) contiguous or adjacent; and

12 (ii) owned or operated by the same
13 person.

14 (4) HANDLE.—The term “handle” means to
15 produce, store, sell, or distribute ammonium nitrate.

16 (5) HANDLER.—The term “handler” means
17 any person that produces, stores, sells, or distributes
18 ammonium nitrate.

19 (6) PURCHASER.—The term “purchaser”
20 means any person that purchases ammonium ni-
21 trate.

22 (7) TERRORISM.—The term “terrorism” has
23 the meaning given that term in section 2(15) of the
24 Homeland Security Act of 2002 (6 U.S.C. 101(15)).

1 (1) request from the Attorney General, and the
2 Attorney General shall provide, any information pre-
3 viously submitted to the Attorney General by the fa-
4 cility or handler under section 843 of title 18,
5 United States Code; and

6 (2) at the election of the facility or handler—

7 (A) use the license issued under that sec-
8 tion in lieu of requiring new information for
9 registration under this section; and

10 (B) consider the license to fully comply
11 with the requirement for registration under this
12 section.

13 (d) CONSULTATION.—In promulgating regulations
14 under this section, the Secretary shall consult with the
15 Secretary of Agriculture to ensure that the access of agri-
16 cultural producers to ammonium nitrate is not unduly bur-
17 dened.

18 (e) DATA CONFIDENTIALITY.—Notwithstanding sec-
19 tion 552 of title 5, United States Code, or the USA PA-
20 TRIOT ACT (Public Law 107–56; 115 Stat. 272) or an
21 amendment made by that Act, the Secretary may not dis-
22 close to any person any information obtained from any fa-
23 cility, handler, or purchaser—

1 (1) regarding any action taken, or to be taken,
2 at the facility or by the handler or purchaser to en-
3 sure the secure handling of ammonium nitrate; or

4 (2) that would disclose—

5 (A) the identity or address of any purchase
6 of ammonium nitrate;

7 (B) the quantity of ammonium nitrate pur-
8 chased; or

9 (C) the details of the purchase transaction.

10 (f) EXCEPTIONS TO DATA CONFIDENTIALITY.—The
11 Secretary may disclose any information described in sub-
12 section (e)—

13 (1) to an officer or employee of the United
14 States, or a person that has entered into a contract
15 with the United States, who needs to know the infor-
16 mation to perform the duties of the officer, em-
17 ployee, or person, or to a State agency pursuant to
18 an arrangement under section 6, under appropriate
19 arrangements to ensure the protection of the infor-
20 mation;

21 (2) to the public, to the extent the Secretary
22 specifically finds that disclosure of particular infor-
23 mation is required in the public interest; or

24 (3) to the extent required by order of a Federal
25 court in a proceeding in which the Secretary is a

1 party, under such protective measures as the court
2 may prescribe.

3 **SEC. 5. ENFORCEMENT.**

4 (a) INSPECTIONS.—The Secretary, without a war-
5 rant, may enter any place during business hours that the
6 Secretary believes may handle ammonium nitrate to deter-
7 mine whether the handling is being conducted in accord-
8 ance with this Act.

9 (b) PREVENTION OF SALE OR DISTRIBUTION
10 ORDER.—In any case in which the Secretary has reason
11 to believe that ammonium nitrate has been handled other
12 than in accordance with this Act, the Secretary may issue
13 a written order preventing any person that owns, controls,
14 or has custody of the ammonium nitrate from selling or
15 distributing the ammonium nitrate.

16 (c) APPEAL PROCEDURES.—

17 (1) IN GENERAL.—A person subject to an order
18 under subsection (b) may request a hearing to con-
19 test the order, under such administrative adjudica-
20 tion procedures as the Secretary may establish.

21 (2) RESCISSION.—If an appeal under para-
22 graph (1) is successful, the Secretary shall rescind
23 the order.

24 (d) IN REM PROCEEDINGS.—The Secretary may in-
25 stitute in rem proceedings in the United States district

1 court for the district in which the ammonium nitrate is
2 located to seize and confiscate ammonium nitrate that has
3 been handled in violation of this Act.

4 **SEC. 6. ADMINISTRATIVE PROVISIONS.**

5 (a) COOPERATIVE AGREEMENTS.—The Secretary
6 may enter into a cooperative agreement with the Secretary
7 of Agriculture, or the head of any State department of
8 agriculture or other State agency that regulates plant nu-
9 trients, to carry out this Act, including cooperating in the
10 enforcement of this Act through the use of personnel or
11 facilities.

12 (b) DELEGATION.—

13 (1) IN GENERAL.—The Secretary may delegate
14 to a State the authority to assist the Secretary in
15 the administration and enforcement of this Act.

16 (2) DELEGATION REQUIRED.—On the request
17 of a Governor of a State, the Secretary shall dele-
18 gate to the State the authority to carry out section
19 4 or 5, on a determination by the Secretary that the
20 State is capable of satisfactorily carrying out that
21 section.

22 (3) FUNDING.—If the Secretary enters into an
23 agreement with a State under this subsection to del-
24 delegate functions to the State, the Secretary shall pro-

1 vide to the State adequate funds to enable the State
2 to carry out the functions.

3 (4) INAPPLICABILITY.—Notwithstanding any
4 other provision of this subsection, this subsection
5 does not authorize a State to carry out a function
6 under section 4 or 5 relating to a facility or handler
7 in the State that makes the election described in sec-
8 tion 4(c)(2).

9 **SEC. 7. CIVIL LIABILITY.**

10 (a) UNLAWFUL ACTS.—It is unlawful for any per-
11 son—

12 (1) to fail to perform any duty required by this
13 Act;

14 (2) to violate the terms of registration under
15 this Act;

16 (3) to fail to keep any record, make any report,
17 or allow any inspection required by this Act; or

18 (4) to violate any sale or distribution order
19 issued under this Act.

20 (b) PENALTIES.—

21 (1) IN GENERAL.—A person that violates this
22 Act may only be assessed a civil penalty by the Sec-
23 retary of not more than \$50,000 per violation.

24 (2) NOTICE AND OPPORTUNITY FOR A HEAR-
25 ING.—No civil penalty shall be assessed under this

1 Act unless the person charged has been given notice
2 and opportunity for a hearing on the charge in the
3 county, parish, or incorporated city of residence of
4 the person charged.

5 (c) JURISDICTION OVER ACTIONS FOR CIVIL DAM-
6 AGES.—The district courts of the United States shall have
7 exclusive jurisdiction over any action for civil damages
8 against a handler for any harm or damage that is alleged
9 to have resulted from the use of ammonium nitrate in vio-
10 lation of law that occurred on or after the date of enact-
11 ment of this Act.

12 **SEC. 8. STATE LAW PREEMPTION.**

13 This Act preempts any State law that regulates the
14 handling of ammonium nitrate to prevent the misappro-
15 priation or use of ammonium nitrate in an act of ter-
16 rorism.

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